For the reasons given earlier in this judgment, *certiorari* will not lie in the circumstances of this case and this application must be dismissed with costs.

Application dismissed.

Solicitors: *Rodyk & Davidson; Braddell Bros.; & Allen & Gledhill.*

RATNAM & ANOR. v. THE PUBLIC INSURANCE CO. LTD.

[O. C. J. (Whyatt C.J.) July 23, 1956]

[Singapore — Civil Suit No. 607 of 1956]

Insurance Claim — Third Party Insurance — Claim against insurers for amount of judgment obtained against insured person — Whether insurers are liable — Whether person driving is driving with the permission of the assured — Person holding a provisional driving licence driving unaccompanied by a licensed driver — Motor Vehicles (Driving Licences) Rules, 1948.

Road Traffic Ordinance (Cap. 227), s. 51 — Claim against insurers — Suspension of insurance.

The facts in this case were shortly as follows:— Chow Ah Tek, the proprietor of Teng Motor Service, purchased a motor car with a view to re-sale. Pending re-sale, he executed a hire purchase agreement with the defendants whereby it was agreed that the defendants as owners would let the car to the Teng Motor Service as hirers. The motor car was simultaneously insured with the defendants as insurers in the name of the Teng Motor Service. Shortly afterwards Chow Ah Tek agreed to sell the car to one Griffin for $2,400. Griffin paid $600 as deposit and promised to pay the balance when he had the money. The car was delivered to Griffin at his house in June 1954 and thereafter the car was in the possession of Griffin. On August 30, 1954, Griffin, who had only a provisional driving licence, drove the car unaccompanied by a licensed driver, and while so doing knocked down and killed one Kanniah. The plaintiffs brought an action against Griffin and obtained judgment for $20,500 and costs. The plaintiffs in this action sought to recover this sum from the defendants under the provisions of section 51 of the Road Traffic Ordinance. The defendants contended that on a proper construction of the insurance policy they were not on risk when the accident occurred, firstly, because Griffin was not a person driving with the permission of the assured within the meaning of that expression as used in the policy, and secondly, he was not a licensed driver as required by the policy since he held only a provisional licence and, at the time of the accident, was driving unaccompanied by a licensed driver contrary to the provisions of the Motor Vehicles (Driving Licences) Rules, 1948.

Held: (1) in this case it was clear that Chow Ah Tek, the assured was not in a position to forbid Griffin to use the car and therefore Griffin could not be said to be driving the car "on the insurer's order or with his permission", therefore (2) the liability arising from Griffin's negligence was not covered by the policy and the defendants were not liable to pay the sum claimed; (3) where a provisional driver drives the car unaccompanied by a licensed driver, the car is being unlawfully driven and the insurance policy must be regarded as suspended until lawful user is resumed; (4) in this case therefore the policy was suspended while Griffin was driving the insured car unaccompanied by a supervisor and consequently the defendants were not on risk when the accident occurred.

Cases referred to:—

(1) *Goodbarne v. Buck* (1940) 1 K.B. 771.

(2) *Lloyd v. Singleton* (1953) 1 All E.R. 291.

(3) *Watkins v. O'Shaughnessy* (1939) 1 All E.R. 385.

(4) *Rubie v. Faulkner* (1940) 1 K.B. 572.

ACTION to recover judgment for Damages.

Denis Murphy for the plaintiffs.

Philip Hoalim Sr. for the defendants.

Cur. Adv. Vult.

Whyatt C.J. : — The plaintiffs are the representatives of the estate of one, Kanniah s/o Packiri, who, while riding a bicycle on the 30th August 1954, was killed as a result of being knocked down by a motor car driven by a man named Griffin. The plaintiffs brought an action for negligence against Griffin and obtained judgment against him in default of appearance on the 5th March 1956 for $20,500 and costs. The plaintiffs now seek to recover this sum from the defendants under the provisions of section 51 of the Road Traffic Ordinance which provide that when judgment is obtained by a third party against an insured person in respect of liability for death or bodily injury covered by a policy of insurance, the insurers shall pay the amount of such judgment to the persons entitled to the benefit of the judgment. This statutory liability of motor car insurers is limited, as the words of section 51 show, to liability "covered by the terms of the policy" and the issue to be determined in this case is whether the driving of this car by Griffin was, at the time of the accident, covered by the terms of the policy. The defendants contend that on a proper construction of the policy, they were not on risk when the accident occurred firstly, because Griffin was not a person driving with the permission of the assured within the meaning of that expression as used in the policy, and secondly, he was not a licensed driver as required by the policy since he held only a provisional licence and, at the time of the accident, was driving unaccompanied by a licensed driver contrary to the provisions of the Motor Vehicles (Driving Licenses) Rules, 1948. Before considering these questions of law it will be convenient to summarise the facts of the case so far as they are relevant to these issues.

At the beginning of June 1954, Chow Ah Tek, the sole proprietor of the Teng Motor Service, of 15 Hamilton Road, Singapore purchased a Morris Oxford car, S.C. 6038, with a view to re-sale. Pending re-sale, he wished to raise some money on the car and accordingly he approached the defendants, who, in addition to carrying on the business of motor car insurers, finance hire-purchase agreements, and received from them the sum of $1,200. At the same time he signed a hire-purchase agreement whereby it was agreed that the defendants, as owners, would let and the Teng

Motor Service, as hirers, would hire the car and pay a lump sum for an option to purchase it at the end of twelve months and in the meantime a monthly sum as hire; simultaneously the defendants issued an insurance policy in respect of the car to the Teng Motor Service for a period of twelve months. All these transactions took place on the 16th June 1954.

Shortly afterwards, Chow Ah Tek came to know Griffin, who was an Army school-teacher then stationed in Singapore, and on the 23rd June 1954 agreed to sell him the car for $2,400. Griffin paid $600 as a deposit and promised to pay the balance as soon as he got money from the Army or from the United Kingdom. Chow Ah Tek informed Griffin about the hire-purchase agreement and told him that as soon as he paid the balance, he, Chow Ah Tek, would get all the documents from the defendants and transfer the car into Griffin's name. Chow Ah Tek delivered the car to Griffin's house on or about the 23rd June 1954. He explained that the reason he took the car to Griffin's house was because he knew Griffin had only a provisional, or "learner's", driving licence and consequently could not drive the car without a supervisor accompanying him in the car. Chow Ah Tek stated in evidence that he did not care to what use Griffin put the car after he had delivered it to him. Griffin used the car during the remainder of June, throughout July and the greater part of August until on the 30th August 1954 the fatal accident occurred. At the time of the accident Griffin held only a provisional licence and was driving alone instead of under the supervision of a licensed driver as required by regulation 14 of the Motor Vehicles (Driving Licences) Rules 1948. Shortly after the accident, Griffin informed Chow Ah Tek that he was being transferred to Hong Kong and did not want the car and he instructed Chow Ah Tek to collect the car from the police station where it had been kept since the accident and to sell it; he did not ask for his deposit to be returned. Chow Ah Tek collected the car and tried to find a buyer, and while doing so, he continued to pay monthly instalments under the hire-purchase agreement to the defendants. Eventually he succeeded in selling the car at the beginning of May 1955 by which time he had made full payment to the defendants.

The first question to be decided on these facts is whether Griffin was covered by the clause in the policy which reads as follows :—

". . . . . the Company will indemnify any person who is driving such motor car on the insured's order or with his permission . . . . .".

The Courts have, from time to time, laid down certain tests for determining whether a person is driving with the permission of the assured. In *Goodbarne v. Buck*[1], Lord Justice Mackinnon said that in order to make a person liable for permitting another person to use a motor vehicle, he must be in a position to forbid the other person to use the motor vehicle. The learned Lord Justice was there considering the position of a person who permits another to use a motor vehicle contrary to the provisions of section 35 of the Road Traffic Act 1930 but it would seem from his judgment and the judgment of Lord Goddard in the later case of *Lloyd v. Singleton*[2], in which this dictum of Mackinnon L.J. was approved, that the same test can properly be applied when the question arises under a motor insurance policy as to whether a person is driving an insured car with the permission of the assured. A similar test was propounded by the learned County Court Judge, and subsequently approved by the Court of Appeal, in *Watkins v. O'Shaughnessy*[3] :—

"Thus, for A to permit B to do anything, the relation between A and B must be such that it is not open for B lawfully to do the thing in question without such permission. It must be open for A to withhold that permission without which B cannot lawfully do the thing in question."

Now in the present case the assured, Chow Ah Tek, agreed with Griffin to sell him the car for $2,400 on the terms that Chow Ah Tek should deliver the car to Griffin on payment of $600, the balance to be paid at a later date. The car was not to be transferred into Griffin's name and the documents which were still with the lenders under the hire-purchase agreement were not to be handed over to Griffin until the balance of the purchase money was paid. It appears to me that the proper analysis of the legal position resulting from this transaction is that the parties agreed that the ownership of the car should not pass to the buyer until the balance of the purchase money was paid and the documents handed over but that in the meantime, Griffin should have, as against Chow Ah Tek, the right to the possession of the car and to use it as he thought fit. This being so, it follows that, after delivering the car at Griffin's house on the 23rd June 1954, Chow Ah Tek was no longer in a position, in the words of Mackinnon L.J., to forbid Griffin to use the car because he had, so to speak, contracted himself out of the right to do so. That was certainly Chow Ah

Tek's understanding of the position, for he said in evidence that he did not care to what use Griffin put the car after he had delivered it to him; and at a later stage of his evidence, after agreeing that Griffin was using the car from the 23rd June to the end of August, he added significantly "That was his own look-out". In my judgment, Griffin was not, during the period from the 23rd June 1954 to the 30th August, 1954, driving this car "on the insured's order or with his permission", but was doing so by virtue of his right to the possession of the car which he had acquired as against Chow Ah Tek under the contract he had made with Chow Ah Tek on the 23rd June. It follows, therefore, that Griffin was not within the terms of this extension clause at the time of the accident and consequently the liability arising from his negligence is not covered by the policy and the defendants are not liable in these proceedings.

Having reached this conclusion on the first question, it is not necessary for me to decide whether Griffin was a licensed driver within the meaning of the policy at the time of the accident but in view of the importance of this matter, I will state my conclusion on it. The relevant clause in the policy reads as follows:—

> ". . . . . the Company will indemnify any person who is driving such motor car on the insured's order or with his permission provided that such person . . . . . holds a licence to drive such motor car . . . . .".

The words "holds a licence to drive such motor car" must, in my opinion, be construed to mean "holds a licence entitling him to drive such motor car." It is clear that a provisional licence-holder who complies with the statutory condition requiring him to be accompanied by a supervisor could lawfully drive the insured car on the highway and therefore it follows that a provisional licence-holder, driving in these circumstances, holds a licence entitling him to drive the insured car within the meaning of this clause in the policy. But obviously different considerations arise when a provisional licence-holder ignores the condition of his licence and ventures on to the highway alone. Not only is there a statutory presumption that such a person is not competent to drive the insured car without supervision, but his very presence on the highway is, as Lord Hewart pointed out in *Rubie v. Faulkner*[4], unlawful because he has failed to comply with the essential condition on which a provisional licence-holder is allowed to drive a motor vehicle on the highway. It would, in my opinion, be a contradiction in terms to say of such a driver that he holds a licence entitling him to drive when his driving is, in law, unlawful. The proper view is to regard the policy as suspended whilst the insured car is being unlawfully driven and as re-attaching when lawful user is resumed. This principle has been recognised and applied in cases where an insured vehicle is used for a different purpose or driven in a different locality from that covered by the policy and in my judgment, it is equally applicable to the situation which arises when a provisional licence-holder drives a car on the highway without a supervisor. Accordingly I find that this policy was suspended whilst Griffin was driving the insured car unaccompanied by a supervisor and consequently the defendants were not on risk when this accident occurred.

For these reasons this action fails. I have come to this conclusion with some regret since it means that in spite of the statutory provision for compulsory insurance, the plaintiff, Ratanam, is unable to obtain compensation for the death of her husband notwithstanding that it was caused by the negligence of the driver of this car. On the other hand no one can fairly expect insurers to pay on a risk additional to that for which they have received a premium.

There will be judgment for the defendants with costs.

Judgment for the defendants.

Solicitors: *Murphy, Dunbar & Chung; Philip Hoalim & Co.*